

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC Docket No. 95-116
Telephone Number Portability) RM 8535

PETITION FOR CLARIFICATION AND PARTIAL RECONSIDERATION

MCI Telecommunications Corporation ("MCI"), by its attorneys and pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. 1.106, hereby petitions for clarification and partial reconsideration of the *Third Report and Order* in this proceeding.¹

INTRODUCTION

The *Third Report and Order* established rules for the recovery of costs associated with implementation of local number portability ("LNP") pursuant to Section 251(e)(2) of the Telecommunications Act of 1996 ("the 1996 Act"), 47 U.S.C. § 251(e)(2). MCI commends the Commission for its serious and careful analysis of the categorization of LNP costs, and believes the *Third Report and Order* is in large part a workable and sensible solution to LNP cost recovery. In this petition, MCI only seeks clarification of a few issues addressed in the decision as well as reconsideration of a small subset of the *Third Report and Order* necessary to ensure competitive neutrality under Section 251(e)(2).

Specifically, the Commission should reconsider its inclusion of certain end user revenues in the scope of carrier revenues used for the apportionment of shared LNP costs. The *Third Report and Order*'s standard of "all end user telecommunications revenues" is over-inclusive be-

¹ *Telephone Number Portability*, Third Report and Order, CC Docket 95-116, RM 8535, FCC 98-82 (rel. May 12, 1998), 63 Fed. Reg. 35,150 (June 29, 1998) ("Third Report and Order").

cause it captures services that are completely unrelated to LNP, that neither use public numbering resources nor impose any costs on the Number Portability Administration Center (“NPAC”) system, and that — unlike the universal service rules used as a model by the Commission — receive no benefits either from local competition or local number portability. The Commission’s assumption that “all telecommunications carriers that depend on the availability of telephone numbers will benefit from number portability” does not and cannot mean that all telecommunications services benefit from LNP. *Third Report and Order* ¶ 89. Consequently, because number portability does not “affect” services such as private line, toll-free and virtual private network services which do not depend on the availability of geographic numbering resources and do not benefit from LNP, *id.* ¶ 105, these services should not be included in the end user revenue calculation. End user revenues from international (*i.e.*, outbound) services, which similarly do not use telephone number resources and are not affected by LNP, should likewise not be a basis for allocation of shared LNP costs.

Several additional points merit clarification. First, MCI seeks Commission clarification that the rules permitting incumbent local exchange carriers (“ILECs”) to pass through their “carrier-specific” costs of LNP to carriers purchasing unbundled switching or reselling ILEC local services require, consistent with the 1996 Act, that such charges be cost based. Second, MCI urges the Commission to clearly require that the LNP administrator recover its own costs of billing and collection operations, specifically the cost of uncollectibles, through a mechanism which ensures that “sufficient” revenues will be realized, rather than over-recovering from contributing carriers based on estimated uncollectible receivables. Third, MCI believes the Commission should clarify that in reporting revenues “attributable” to each NPAC region, *Third Report and Order* ¶ 105, carriers are not required to develop costly new accounting mechanisms, not

used in universal service reporting, for disaggregating end user revenues, but rather may attribute revenues regionally using a *pro rata* or other reasonable methodology.

DISCUSSION

I. THE COMMISSION SHOULD RECONSIDER INCLUSION OF END USER REVENUES FROM SERVICES, SUCH AS PRIVATE LINES, VIRTUAL PRIVATE NETWORKS AND INTERNATIONAL SERVICES, THAT DO NOT USE PUBLIC TELEPHONE NUMBERING RESOURCES AND ARE NOT AFFECTED BY LNP

In the *Third Report and Order*, the Commission decided that the shared costs of each regional NPAC database will be distributed among all telecommunications carriers based on their combined intrastate, interstate and international end-user telecommunications revenues for each region. *Third Report and Order* ¶¶ 105, 113. In concluding that this end user revenue allocator was competitively neutral, the Commission repeatedly noted the similarity between this approach and the allocator adopted for determining universal service contributions. *Id.* ¶¶ 105, 107, 109. Although the *Third Report and Order* reasons that the end-user revenue standard satisfies Section 251(e)(2)'s command for a competitively neutral LNP cost recovery mechanism, the reality is that the end user criterion is over-inclusive because it captures services that are completely unrelated to LNP, that neither use numbering resources nor impose any costs on the NPAC system, and that (unlike universal service) receive no benefits either from local competition or local number portability.

The *Third Report and Order* bases its selection of an end-user telecommunications allocator on the Commission's prior determinations in the universal service proceeding that this approach is "administratively efficient" and "competitively neutral because it avoids double-counting." *Third Report and Order* ¶¶ 107, 109. Yet the differing policy considerations underlying universal service and LNP directly impact the competitive neutrality of the LNP cost re-

covery allocator. For purposes of contributing to universal service, the Commission's cost recovery objectives were premised on the benefits that all telecommunications carriers (and thus all services) receive from ubiquitous consumer participation in the public switched telephone network.² Likewise, for LNP the policy consideration should turn on whether the services at issue utilize or otherwise benefit from implementation of LNP. An allocator is competitively neutral if it imposes similar cost burdens on carriers offering similar services, which in turn requires a rational connection between the services offered and the benefits derived from number portability. Administrative efficiency is no excuse for crafting an allocator that imposes cost recovery obligations on carriers without a sensible relation to the services from which each carrier realizes revenues.

The Commission's analysis of the relationship between telecommunications services and LNP is plainly correct for local exchange services and long-distance services that are terminated using the number portability database. For these services, "[a]ll carriers that port telephone numbers and all carriers that terminate calls to portability-capable NXXs depend on" the NPAC system for number portability. *Third Report and Order* ¶ 89. Yet there are many services offered by carriers that do not utilize ported numbers and are not terminated through the LNP databases. Indeed, although "[a]ll telecommunications carriers that depend on the availability of telephone numbers will benefit from number portability," *id.*, this does not and cannot mean that all telecommunications services offered by all carriers benefit from LNP. Although the *Third Report and Order* reasons that an allocator encompassing all intrastate, interstate and international revenues is appropriate "because number portability will affect all such services," *id.* ¶

² *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, 9206-07 (1997), appeal pending sub nom. *Texas Office of Public Util. Counsel v. FCC*, No. 97-60421 (5th Cir. filed June 25, 1997).

105, that simply is not the case. Contrary to the Commission's assumption, there are numerous services that are unaffected by LNP, do not depend on telephone numbering resources, and receive no benefits whatever from number portability.

The Commission should therefore reconsider its "end user" allocator criterion for services that do not use public, geographic numbering resources or otherwise benefit from LNP. Specifically, MCI urges the Commission to exclude revenues from certain services — private line, toll-free and virtual private network services — from the calculation of end user revenues. These services do not utilize LNP and are not affected by the advent of local telephone competition. Private line revenues come from services provided by carriers between dedicated end user locations and do not use the public switched telephone^o network. Similarly, virtual private network services do not consume any telephone numbering resources because their numbering schemes are carrier-generated and end-user specific. Toll-free services not only do not utilize geographic numbering resources but, as the Commission recognizes, are already served by a separate, toll-free number portability database subject to separate cost recovery obligations. *Third Report and Order* ¶ 90. Thus, carrier revenues from services that do not depend on public telephone numbers and are unaffected by local number portability should be excluded from the determination of end user revenues.

For this same reason, international traffic should also be excluded from the calculation of end user revenues. Like the services identified above, international services do not benefit from LNP and do not depend on telephone number resources. Even if it could be argued that private line and similar services are somehow "affected by" LNP, there is no rational policy reason why international end user revenues — which by definition arise only from *outbound* international telecommunications services — are at all related either to local telephone service or number

utilization. International calls terminated abroad are not “affected” by LNP in the slightest and do not consume any domestic telephone number resources, public or private. Because there is no rational connection between international services and LNP, the end-user revenue allocator is not competitively neutral but rather discriminates against carriers, such as MCI, that serve substantial amounts of international customers.

II. THE COMMISSION SHOULD CLARIFY SEVERAL PROVISIONS OF THE COST RECOVERY ORDER AND RULES RELATED TO ILEC CHARGES, LNP ADMINISTRATOR CHARGES AND CARRIER REVENUE ATTRIBUTION

MCI supports the Commission’s basic decisions in the *Third Report and Order* with respect to categorization of number portability costs and carrier responsibility for recovery of carrier-specific LNP costs. There are three limited areas, however, where MCI believes the Commission’s Order and LNP cost recovery rules merit clarification.³

A. ILEC Carrier-Specific Cost Recovery in Unbundling and Resale Charges

The Commission’s new rules state that in recovering carrier-specific costs directly related to LNP, incumbent LECs (“ILECs”) may assess on carriers that purchase unbundled switching, or that resell the ILEC’s local service, the same charges the ILEC would assess on its own end users, as if the ILEC were serving the end user directly. 47 C.F.R. § 52.33(a)(1)(B). In order for the charges assessed on carriers purchasing unbundled switching or resale to comport with the costing requirements of the 1996 Act, however, such charges must be cost-based. 47 U.S.C. § 251(c)(3). (c)(4). By not addressing this matter expressly, the Commission has created an unnecessary tension between the *Third Report and Order* and its prior decisions on interconnection, unbundling and resale pricing. Accordingly, MCI respectfully requests that the Commission

³ To the extent the Commission concludes that its Order and associated rules do not require clarification, MCI in the alternative respectfully requests reconsideration of the points addressed in this Section.

clarify that any costs associated with LNP that are charged to carriers purchasing unbundled switching be calculated on the basis of total element long run incremental costs ("TELRIC"), and similarly, that costs for LNP charged to resellers be based on avoided costs.

B. LNP Administrator Collection of "Sufficient" Costs

MCI requests Commission clarification with respect to the LNP administrator's assignment of costs to the shared cost category. The need for clarification arises from the pending proposal by the current NPAC administrator, Lockheed-Martin IMS ("Lockheed"), for recovery of shared cost "uncollectibles." Lockheed proposes to assess on all carriers with signed NPAC user agreements an *estimated* cost of uncollectibles, plus a margin, before actual uncollectibles are determined. Subsequently, as the uncollectibles are recovered, these estimated payments would be "trued-up" on a quarterly basis.

The *Third Report and Order* provides that the LNP administrator ("LNPA") is authorized to "collect sufficient revenues" to fund the database. *Third Report and Order* ¶ 105; 47 C.F.R. § 52.32(a). This clearly requires Lockheed to recover all of the shared costs of operating the regional LNP databases. Yet "estimated" uncollectibles are not a shared cost of NPAC operations. Unless and until Lockheed has made collection and enforcement efforts adequate to ensure that the responsible carrier(s) are unable to make their required contributions, there is no basis for the inclusion of any cost of uncollectibles in the "shared costs" allocated by the LNPA. There is no legal or policy justification for permitting Lockheed to require carriers which have executed NPAC user agreements to "pre-pay" the potential costs of future uncollectible payments through the assessment of "estimated" uncollectibles. Furthermore, even actual uncollectibles cannot be assessed on other carriers unless the LNPA first demonstrates that it lacks "sufficient revenues" to fund the number portability database. The Commission should accordingly clarify that the

assessment of estimated uncollectibles by the LNPA is inconsistent with Section 52.32(a) of the Commission's Rules.

C. Regional End-User Revenue Reporting

The *Third Report and Order* requires all telecommunications carriers to report revenues for purposes of LNP recovery on a regional basis for each of the seven NPAC regions. *Third Report and Order* ¶ 116. The Commission states that the LNP administrator should allocate costs in proportion to end-user revenues "attributable to that region." *Id.* ¶ 105. The rules, in turn, provide that the LNPA should assess charges on carriers in proportion to the revenues "derive[d] from" providing services in each region. 47 C.F.R. § 52.32(a)(2)(B).

As noted above, the Commission analogized to universal service in adopting an end-user revenue allocator for shared LNP costs. Because revenues for universal service are calculated on a national basis, however, the *Third Report and Order's* requirement for regional reporting is ambiguous. There is no indication in the decision that the Commission contemplated requiring carriers to develop new revenue attribution methodologies, and new revenue reporting systems, in order to regionally allocate revenues. And if the development of such new systems were required, their cost and complexity would seriously delay implementation of LNP cost recovery. For instance, MCI estimates that it would take more than \$1 million, and until at least the third quarter of 1999, to develop region-specific revenue attribution systems for all of its end user services. Moreover, the determination of whether a call is "derived from" or "attributable to" a particular LNP region is very difficult because LNP is a terminating service, *Third Report and Order* ¶ 89, and telecommunications revenues are ordinarily classified by originating end user.

The Commission should therefore clarify that carriers are permitted to "attribute" end user revenues to LNPA regions on a *pro rata* or other reasonable basis, but are not required to

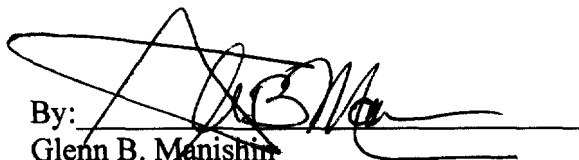
develop new revenue attribution systems for purposes only of LNP cost recovery. In other words, for purposes of carrier revenue reporting under 47 C.F.R. § 52.32(b), a carrier is not required to utilize any specific attribution methodology.

CONCLUSION

For all these reasons, the Commission should reconsider and clarify those limited portions of the *Third Report and Order* discussed above.

Respectfully submitted,

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